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Right of peoples to self-determination

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Report of the Secretary-General

Summary

In its resolution 65/201, the General Assembly requested the Secretary-General to report to the Assembly at its sixty-sixth session on the question of the universal realization of the right of peoples to self-determination. The present report is submitted in accordance with this request.

The report outlines the relevant jurisprudence of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights on the treaty-based human rights norms relating to the realization of the right of peoples to self-determination, and provides a summary of the developments relating to the consideration by the Human Rights Council of the subject matter, the referendum on the right of self-determination of the people of South Sudan, and the situation concerning Western Sahara.

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I. Introduction

1. The General Assembly, in its resolution 65/201, reaffirmed that the universal realization of the right of all peoples, including those under colonial, foreign and alien domination, to self-determination is a fundamental condition for the effective guarantee and observance of human rights and for the preservation and promotion of such rights. The Assembly requested the Human Rights Council to continue to give special attention to the violation of human rights, especially the right to self-determination, resulting from foreign military intervention, aggression or occupation, and requested the Secretary-General to report on this question to the Assembly at its sixty-sixth session. The present report is submitted in accordance with paragraph 6 of the resolution.

2. The report provides a summary of the main developments relating to the realization of the right to self-determination within the framework of the activities of the United Nations human rights mechanisms during the period under review. This includes recent concluding observations of the Human Rights Committee, and the Committee on Economic, Social and Cultural Rights based on their consideration of the periodic reports submitted by States parties to the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, in respect of the implementation of the right to self-determination guaranteed in article 1 of the two Covenants. The report also summarizes recent developments relating to the consideration by the Human Rights Council at its sixteenth session of the question of the realization of the right to self-determination, as well as those related to the referendum on the right of self-determination of the people of South Sudan and the situation concerning Western Sahara.

II. Human Rights Committee and Committee on Economic, Social and Cultural Rights

3. The principle of self-determination is enshrined in Article 1, paragraph 2, of the Charter of the United Nations. Article 1, paragraph 1, of the International Covenant on Civil and Political Rights and article 1, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights affirm the right of all peoples to self-determination. Article 1, paragraph 3, of the International Covenant on Civil and Political Rights and article 1, paragraph 3, of the International Covenant on Economic, Social and Cultural Rights impose upon States parties, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, the obligation to promote the realization of that right and respect it, in conformity with the provisions of the Charter.

4. The right to self-determination has been addressed by the Human Rights Committee and the Committee on Economic, Social and Cultural Rights in their consideration of States parties' periodic reports submitted, respectively, under article 40 of the International Covenant on Civil and Political Rights and articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, with a focus on paragraph 2 of article 1 of the two Covenants, which affirms a particular aspect of the economic content of this right, namely the right of peoples, for their own ends, to "freely dispose of their natural wealth and resources without prejudice to

any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence". The relevant concluding observations are summarized below.

A. Concluding observations by the Human Rights Committee

5. During the reporting period, the Human Rights Committee addressed several issues related to the right to self-determination in its concluding observations on Israel with respect to the Occupied Palestinian Territories and on Colombia, El Salvador and Togo with respect to the rights of the indigenous peoples.

6. In its concluding observations on Israel adopted in July 2010, the Committee noted with concern the State party's military blockade of the Gaza Strip, in force since June 2007. While recognizing the State party's recent easing of the blockade with regard to the entry of civilian goods by land, the Committee stated that it was nevertheless concerned at the effects of the blockade on the civilian population in the Gaza Strip, including restrictions to their freedom of movement, some of which have led to deaths of patients in need of urgent medical care, and restrictions on the access to sufficient drinking water and adequate sanitation. The State party was requested to lift its military blockade of the Gaza Strip, insofar as it adversely affects the civilian population (CCPR/C/ISR/CO/3, para. 8).

7. Referring to paragraph 19 of the Committee's previous concluding observations (CCPR/CO/78/ISR), the Advisory Opinion of the International Court of Justice, and the State party's Supreme Court ruling of 2005, the Committee also expressed concern at the restrictions to freedom of movement imposed on Palestinians, in particular persons residing in the "Seam Zone" between the wall and Israel, the frequent refusal to grant agricultural permits to access the land on the other side of the wall or to visit relatives, and the irregular opening hours of the agricultural gates. Moreover, the Committee was concerned that despite the State party's temporary freeze on the construction of settlements in the West Bank, East Jerusalem and the occupied Syrian Golan Heights, the settler population continued to increase.

8. The Committee called on the State party to comply with its previous concluding observations and take into account the Advisory Opinion of the International Court of Justice and stop the construction of a "Seam Zone" by means of a wall, seriously impeding the right to freedom of movement, and to family life. It should cease all construction of settlements in the occupied territories (CCPR/C/ISR/CO/3, para. 16).

9. In its concluding observations on Colombia adopted in August 2010, the Committee expressed concern that the Afro-Colombian and indigenous population groups continue to be discriminated against and to be particularly exposed to the violence of armed conflict. Despite legal recognition of their right to collective land ownership, in practice those population groups face enormous obstacles in exercising control over their lands and territories. The Committee regretted that no progress has been made on the adoption of legislation to criminalize racial discrimination or on the adoption of legislation for holding prior consultations and guaranteeing the free, prior and informed consent of the members of the relevant community.

10. The Committee called on the State party to strengthen special measures in favour of Afro-Colombian and indigenous people in order to guarantee the enjoyment of their rights and, in particular, to ensure that they exercise control over their land and that it is restituted to them, as appropriate. The State party was requested to adopt legislation criminalizing racial discrimination and adopt the pertinent legislation for holding prior consultations with a view to guaranteeing the free, prior and informed consent of community members (CCPR/C/COL/CO/6, para. 25).

11. In its concluding observations on El Salvador adopted in July 2010, the Committee expressed concern at the marginalization of the various indigenous peoples in the State party, the lack of full recognition of indigenous peoples, the lack of statistics on indigenous peoples in the 2007 census, the absence of special measures to promote the realization of their rights as peoples, and the absence of measures to protect indigenous languages.

12. The Committee recommended to the State party to promote the full recognition of all indigenous peoples and consider ratifying the International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989 (No. 169). Following consultations with all indigenous peoples and with their free and informed consent, the State party was also called upon to include in the next population census questions relating to the identification of indigenous peoples; design and implement public policies to move towards the full realization of their rights; and adopt special measures to address their marginalization. The Committee also recommended that the State party, after consultation with all indigenous peoples, adopt measures to revive their languages and cultures (CCPR/C/SLV/CO/6, para. 18).

13. In its concluding observations on Togo adopted in April 2011, the Committee noted with concern that neither the existence of indigenous peoples in Togo nor their right to free, prior and informed consent is recognized. The State party was called upon to take the necessary steps to guarantee the recognition of minorities and indigenous peoples and to ensure that indigenous peoples are able to exercise their right to free, prior and informed consent (CCPR/C/TGO/CO/4, para. 21).

B. Concluding observations by the Committee on Economic, Social and Cultural Rights

14. The Committee on Economic, Social and Cultural Rights addressed relevant aspects of the right to self-determination in its concluding observations on the Russian Federation and Sri Lanka with respect to the rights of indigenous peoples.

15. In its concluding observations on the Russian Federation adopted in May 2011, the Committee expressed concern at the lack of concrete outcomes of the new policy adopted in February 2009 for the sustainable development of the indigenous peoples in the North, Siberia and the Far East of the Russian Federation and the corresponding action plan for 2009-2011. The Committee was also concerned that changes to federal legislation regulating the use of land, forests and water bodies, in particular the revised Land (2001) and Forest (2006) Codes and the new Water Code, deprive indigenous peoples of the right to their ancestral lands, fauna and biological as well as aquatic resources, on which they rely for their traditional

economic activities, through granting of licences to private companies for development of projects such as the extraction of subsoil resources.

16. The Committee recommended to the State party to:

(a) Incorporate into the revised Land Code and the new revised draft Law on Territories of Traditional Nature Use the right of indigenous peoples to their ancestral lands and the right to free access to natural resources on which indigenous communities rely for their subsistence into the Forest and Water Codes;

(b) Seek the free informed consent of indigenous communities and give primary consideration to their special needs prior to granting licences to private companies for economic activities on territories traditionally occupied or used by those communities;

(c) Ensure that licensing agreements with private entities provide for adequate compensation of the affected communities;

(d) Intensify its efforts to effectively implement the federal target programme for the economic and social development of the indigenous peoples, extend it to all peoples that self-identify as "indigenous";

(e) Adopt and implement by the next periodic report the new revised draft Law on Territories of Traditional Nature Use of Indigenous Numerically Small Peoples of the North, Siberia and the Far East of the Russian Federation.

17. The Committee also urged the State party to consider ratifying ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (E/C.12/RUS/CO/5, para. 7).

18. In its concluding observations on Sri Lanka adopted in December 2010, the Committee expressed concern that the conversion of the Veddahs's traditional land into a national park has led to their socio-economic marginalization and impoverishment, Veddahs having been prohibited access to their traditional hunting grounds and honey sites. The Committee was also concerned that Veddahs were highly stigmatized in the State party, in particular Veddah children, who are the victims of ostracism in the school system and often employed in hazardous occupations.

19. The Committee urged the State party to ensure that the Veddahs can return to and remain undisturbed on the lands from which they were evicted, in particular in the Maduru Oya reserve, to establish a State authority for the representation of Veddahs, which should be consulted and should give consent prior to the implementation of any project or public policy affecting their lives. The Committee also recommended that the State party consider ratifying ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries (E/C.12/LKA/CO/2-4, para. 11).

III. Consideration by the Human Rights Council of the question of realization of the right of peoples to self-determination

20. At its sixteenth session, held from 28 February to 25 March 2011, the Human Rights Council considered the question of the realization of the right of peoples to self-determination under agenda item 7 and adopted resolution 16/30 on the right of

the Palestinian people to self-determination. The Council reaffirmed the inalienable, permanent and unqualified right of the Palestinian people to self-determination and urged all Member States and relevant bodies of the United Nations system to support and assist the Palestinian people in the early realization of their right to self-determination.

IV. Referendum on the right of self-determination of the people of South Sudan

21. On 9 January 2011, the people of South Sudan voted in a referendum to secede from the rest of the Sudan. A total of 98.83 per cent of all voters chose independence. The results were immediately accepted by the ruling National Congress Party and later endorsed by the national legislature. The national Government of the Sudan and the autonomous Government of South Sudan have since been preparing for the transition to the post-Comprehensive Peace Agreement period and the independence of South Sudan. The parties to the peace agreement have reiterated their commitment to resolving the remaining issues pertaining to the Comprehensive Peace Agreement, including border arrangements, border demarcation, citizenship, wealth- and asset-sharing, and security arrangements.

22. At the announcement of the results of the referendum on the right of self-determination of the people of South Sudan on 7 February 2011, the Secretary-General of the United Nations commended the partners of the Comprehensive Peace Agreement, the Government of the Sudan, and the Government of South Sudan for keeping their commitment to maintain peace and stability throughout the process, and urged them to build on the momentum generated by the successful conduct of the referendum to reach an agreement on post-referendum arrangements, including Abyei, expeditiously and in the same spirit of cooperation.

V. Situation concerning Western Sahara

23. In his latest report to the Security Council on the situation concerning Western Sahara, the Secretary-General noted (see S/2011/249, para. 21) that while the two parties to the conflict, Morocco and the Frente Polisario, continued to meet at regular intervals to discuss factors affecting the negotiating atmosphere and specific subjects of mutual interest, no progress was registered on the core issues of the future status of Western Sahara and the means by which the self-determination of the people of Western Sahara was to occur. In recognition of the fact that, arrival at a final status on which the population of Western Sahara, both inside and outside the Territory, has not clearly and convincingly expressed its view is likely to engender new tensions in Western Sahara and in the region, the Secretary-General recommended three initiatives to the parties, with respect to the representation and the issues to be discussed during their future talks (ibid., para. 120).

24. In its resolution 1979 (2011) extending the mandate of United Nations Mission for the Referendum in Western Sahara until 30 April 2012, the Security Council reaffirmed its commitment to assist the parties to achieve a just, lasting, and mutually acceptable political solution, which will provide for the self-determination of the people of Western Sahara in the context of arrangements consistent with the principles and purposes of the Charter of the United Nations, and called on the

parties to continue to show political will and work in an atmosphere propitious for dialogue in order to enter into a more intensive and substantive negotiating phase by, inter alia, devoting attention to the above-mentioned initiatives proposed by the Secretary-General in paragraph 120 of his report (S/2011/249).

VI. Conclusion

25. **The right of self-determination is enshrined in article 1 of the International Covenant on Civil and Political Rights and article 1 of the International Covenant on Economic, Social and Cultural Rights. During the reporting period, the Human Rights Council as well as the human rights treaty bodies have continued to address issues related to the realization of the right.**